

Before the
Federal Communications Commission
 Washington, DC

RECEIVED

MAR 22 2002

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Amendment of Section 73.202(b),)
 Table of Allotments,) RM-
 FM Broadcast Stations)
 (Dexter, Georgia))

To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Broadcast Equities Corp., by its attorney, hereby requests reconsideration of the action of the Mass Media Bureau ("Bureau") dismissing its proposal for allotment of Channel 300A to Dexter, Georgia. Attachment 1. With respect thereto, the following is stated:

The Bureau's dismissal of Broadcast Equities' rulemaking proposal was in error. In support of the dismissal, the Bureau cites *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1996), as supporting its position. That case is inapposite. In *Cut and Shoot*, the Commission dismissed a rulemaking proposal where, as here, the proposal was short-spaced with a station's licensed site but not with the station's construction permit site, noting that the petitioner must continue to protect the licensed site because "the facilities set forth in some outstanding construction permits are never built and licensed." *Id.* at ¶ 4. That, however, is not the case in this instance. The proposal for Channel 300A was short-spaced with the license site of Station WHTA, Channel 300C1, Hampton, Georgia (File No. BLH-19890221KA), but it was not short-spaced with the WHTA's construction permit site granted on January 4, 2001 (File No. BPH-19990203ID). Construction of the WHTA construction permit site, however, was completed in September 2001, and as of September 20, 2001, the station already was operating from the new site, with its downgraded facilities. Attachment 2. Here, the petition for

No. of Copies rec'd CT 4
 List ABCDE

rulemaking was filed on September 24, 2001, *after* the WHTA construction permit site already was constructed and in operation, *and* following such date as the station had commenced operating such facilities under Automatic Program Test Authority. Moreover, whether the new site will be granted a "license" is not in any way speculative. The WHTA license at the new site was granted on March 13, 2002. Attachment 3.

Therefore, unlike the *Cut and Shoot* case, this was *not* a situation where the Commission has to be concerned with whether the "facilities set forth in [the] outstanding construction permit are never built and licensed." As of the date of filing the rulemaking, WHTA already had *abandoned* its licensed site in favor of the new license site. Moreover, as the Commission repeatedly has observed, where facilities have been constructed in accord with the terms of a construction permit, the filing and grant of a license application is a mere ministerial act. Therefore, under these circumstances, no public interest reason exists for dismissing Broadcast Equities' rule making proposal, and it should be reinstated *nunc pro tunc*.

WHEREFORE, it respectfully is requested that this Petition for Reconsideration be granted.

Respectfully submitted,

BROADCAST EQUITIES CORP.

By: 

Dan J. Alpert

Its Attorney

The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

703-243-8690

March 22, 2002

ATTACHMENT 1



Federal Communications Commission
Washington, D.C. 20554

February 20, 2002

The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

Dear Mr. Alpert:

This letter refers to the petition for rule making you filed on September 24, 2001, on behalf of Broadcast Equities Corp., requesting that FM Channel 300A be allotted to Dexter, Georgia.

An initial review of your petition shows that it is unacceptable for consideration at this time. The proposal for Channel 300A at Dexter is short-spaced to the licensed facilities for Station WHTA, Channel 300C1, Hampton, Georgia. Although a construction permit has been issued to allow the station to change to Channel 300C2 at a location that would be fully spaced, no license has been issued for the facilities proposed. In regard to this downgrade at Hampton, any rulemaking proposal must protect the authorized Class C1 facilities until the Class C2 facilities are licensed. See Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 4 FCC Rcd 2413 (1989). Thus, your request is contingent on the grant of the license for the facilities specified in the construction permit for Station WHTA, and we do not accept such contingent petitions for rulemaking. See Cut and Shoot, Texas, 11 FCC Rcd 16383 (1996).

Therefore, we are returning your petition for rulemaking.

Sincerely,

A handwritten signature in black ink, which appears to read "John A. Karousos", is written over the typed name and title.

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

ATTACHMENT 2

Federal Communications Commission Washington, D.C. 20554		Approved by OMB 3060-0506 (March 2000)	FOR FCC USE ONLY
FCC 302-FM			
APPLICATION FOR FM BROADCAST STATION LICENSE		FOR COMMISSION USE ONLY FILE NO. BLH - 20010920ABE	
Read INSTRUCTIONS Before Filling Out Form			

Section I - General Information

1. Legal Name of the Applicant
U.S. BROADCASTING,L.P.

Mailing Address
P.O. BOX 900

City MACON	State or Country (if foreign address) GA	ZIP Code 31202 -
Telephone Number (include area code) 9127453383	E-Mail Address (if available)	
	Call Sign WPEZ	Facility Identifier 52548

2. Contact Representative (if other than licensee/permittee)
DAVID TILLOTSON

Firm or Company Name LAW OFFICE OF DAVID TILLOTSON
Telephone Number (include area code) 2026256241
E-Mail Address (if available) DTLAW@SPEAKEASY.NET

3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):
☐ Governmental Entity ☐ Noncommercial Educational Licensee/Permittee ☐ Other

4. Facility Information:
a. ☒ Commercial ☐ Noncommercial
b. ☐ Directional ☒ Nondirectional
c. Community of License:
City: HAMPTON State: GA

5. **Program Test Authority:**
☐ Requesting program test authority.
☒ Station operating pursuant to automatic program test authority (47 C.F.R. Section 73.1620(a)(1)).

6. **Purpose of Application**
☒ Cover construction permit (list most recent construction permit file number -- starts with the prefix BPH-19990203ID BPH, BMPH, BPED, or BMPED):
☐ Modify an authorized license (list license file number -- starts with the prefix BLH, BMLH, BLED, or BMLED):
☐ Amend a pending application
If an amendment, **submit as an Exhibit** a listing by Section and Question Number the portions of the pending application that are being revised.

[Exhibit 1]

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

Section II - Legal and Financial

1. Certification. Applicant certifies that it has answered each question in this application based on its review of the application instructions and worksheets. Applicant further certifies that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets.	<input checked="" type="radio"/> Yes <input type="radio"/> No
2. Licensee/Permittee certifies that all terms, conditions, and obligations set forth in the underlying construction permit have been fully met.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 2]
3. Licensee/Permittee certifies that, apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 3]
4. Character Issues. Applicant certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with: a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application; or b. any pending broadcast application in which character issues have been raised.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 4]
5. Adverse Findings. Applicant certifies that, with respect to the applicant and any party to the application, no adverse finding has been made, nor has an adverse final action been taken related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 5]
6. Anti-Drug Abuse Act Certification. Applicant certifies that neither licensee/permittee nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.	<input checked="" type="radio"/> Yes <input type="radio"/> No

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing DOUG GRIMM	Typed or Printed Title of Person Signing EXEC VICE PRESIDENT OF GENERAL PARTNER
Signature	Date 09/20/2001

SECTION III - PREPARER'S CERTIFICATION

I certify that I have prepared Section III (Engineering data) on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name LOUIS R DUTREIL SR		Relationship to Applicant (e.g., Consulting Engineer) CONSULTING ENGINEER	
Signature		Date 10/20/2001	
Mailing Address 201 FLETCHER AVE			
City SARASOTA		State or Country (if foreign address) FL	Zip Code 34237 - 6019
Telephone Number (include area code) 9413296000		E-Mail Address (if available) BOBSR@DLR.COM	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Section III - Engineering

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

1. Channel: 300

2. a. Effective Radiated Power: 41 kW(H) 41 kW(V)
b. Maximum Effective Radiated Power: kW(H) kW(V)
(Beam-Tilt Antenna ONLY) ☐ Not Applicable

3. Transmitter Power Output: 34.2 kW

4. Antenna Data

Manufacturer	Model	Number of Sections	Spacing Between Sections (wavelength)
ERI	SHPX-4AC-HW-SP	4	0.5

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

CERTIFICATION

All applicants must complete this section.

5. Main Studio Location. The main studio location complies with 47 C.F.R. Section 73.1125.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 6]
6. Transmitter Power Output. The operating transmitter power output produces the authorized effective radiated power.	<input checked="" type="radio"/> Yes <input type="radio"/> No See Explanation in [Exhibit 7]

APPLICATIONS FILED TO COVER A CONSTRUCTION PERMIT.

Only applicants filing this application to cover a construction permit must complete the following section.

NOTE: In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

ATTACHMENT 3



United States of America
FEDERAL COMMUNICATIONS COMMISSION
FM BROADCAST STATION LICENSE

Authorizing Official:

Official Mailing Address:

U.S. BROADCASTING, L.P.
P.O. BOX 900
MACON GA 31201

Penelope A. Dade
Supervisory Analyst
Audio Services Division
Mass Media Bureau

Facility Id: 52548

Call Sign: WHTA

License File Number: BLH-20010920ABE

Grant Date: March 13, 2002

This license expires 3:00 a.m.
local time, April 01, 2004.

This License Covers Permit No.: BPH-19990203ID

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Name of Licensee: U.S. BROADCASTING, L.P.

Station Location: GA-HAMPTON

Frequency (MHz): 107.9

Channel: 300

Class: C2

Hours of Operation: Unlimited

Callsign: WHTA

License No.: BLH-20010920ABE

Transmitter: Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: 34 kW

Antenna type: (directional or non-directional): Non-Directional

Description: ERI SHPX-4AC-HW-SP

Antenna Coordinates: North Latitude: 33 deg 29 min 22 sec

West Longitude: 84 deg 34 min 07 sec

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the Horizontal Plane (kW):	41	41
Height of radiation center above ground (Meters):	131	131
Height of radiation center above mean sea level (Meters):	424	424
Height of radiation center above average terrain (Meters):	150	150
Antenna structure registration number: 1018915		
Overall height of antenna structure above ground (including obstruction lighting if any) see the registration for this antenna structure.		

Special operating conditions or restrictions:

- 1 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.
- 2 ***** This is a Section 73.215 contour protection grant *****
***** as requested by this applicant *****

*** END OF AUTHORIZATION ***